

Bill No. 15-03  
Concerning: Smoking - Eating and  
Drinking Establishments  
Revised: 7-1-03 Draft No. 4  
Introduced: May 13, 2003  
Enacted: July 1, 2003  
Executive: July 10, 2003  
Effective: October 9, 2003  
Sunset Date: None  
Ch. 12, Laws of Mont. Co. 2003

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

---

By: Councilmembers Andrews, Floreen, Leventhal, Perez, and Knapp

---

**AN ACT** to:

- (1) prohibit smoking in certain eating and drinking establishments;
- (2) repeal provisions of County law which require certain restaurants to designate non-smoking areas;
- (3) provide certain penalties for and procedures to enforce smoking restrictions; and
- (4) generally regulate smoking at eating and drinking establishments.

By amending

Montgomery County Code  
Chapter 24, Health and Sanitation  
Section 24-9

By repealing

Montgomery County Code  
Chapter 24, Health and Sanitation  
Section 24-9A

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 24-9 is amended and Section 24-9A is repealed as follows:**

**24-9. Smoking in public places.**

\* \* \*

(b) *Smoking prohibited in certain public places.* A person must not smoke in any:

\* \* \*

(5) Theatre [(other than a dinner theatre)] or movie theater;

\* \* \*

(8) Business or organization open to the public, including a retail store, bank, office, factory, eating and drinking establishment, or any other private business or organization [except an eating and drinking establishment];

\* \* \*

(c) *Exceptions.* Smoking is not prohibited by this Section:

\* \* \*

(7) In the bar and dining area of an eating and drinking establishment that:

(A) is a club as defined in the state alcoholic beverages law;

(B) has an alcoholic beverages license issued to private clubs under the state alcoholic beverages law; and

(C) allows consumption of alcoholic beverages on its premises.

(d) *Posting signs.*

(1) Signs prohibiting or permitting smoking, as the case may be, must be posted conspicuously at each entrance to a public place covered by this Section.

(2) Where smoking is prohibited by this Section, the sign either must read "No smoking by order of Montgomery County Code § 24-9. Enforced by (department designated by the County Executive)" or be a performance-oriented sign such as "No Smoking" or "This is a Smoke Free Establishment." The international no-smoking symbol may replace the words "No smoking."

(3) Signs need not be permanently attached to a structure. The owner and the person in control of the room or area are both responsible for posting the required signs.

(e) *Duty to prevent smoking in certain areas.* The owner or person in control of a building or area covered by this Section must refuse to serve or seat any person who smokes where smoking is prohibited, and must ask the person to leave the building or area if the person continues to smoke after proper warning.

(f) *Optional smoking restrictions.* The owner or person in control of any property not covered in subsection (b) or exempted under subsection (c) may prohibit or restrict smoking as provided in this Section by notifying, in writing, the department designated to enforce this Section and by posting appropriate signs. The Department must enforce the prohibition or restriction wherever signs are posted until the owner or person in control of the property notifies the department in writing that the owner or person in control has revoked the prohibition or restriction and removed all signs.

(g) *Limitations.* This Section does not:

(1) allow any person to smoke at any place where smoking is otherwise restricted; or

(2) prevent an owner or person in charge from prohibiting smoking entirely at any business or workplace.

(h) *Other laws still apply.*

(1) This Section adds to, and does not replace or restrict, any other applicable federal, state, or County law or regulation.

(2) This Section does not allow smoking where smoking is restricted by any applicable fire prevention rule or regulation.

(i) *Regulations.* The County Executive may adopt reasonable regulations under method (2) to enforce this Section.

(j) *Enforcement and penalties.*

(1) Any violation of this Section is a class C civil violation. Each day a violation exists is a separate offense.

(2) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this Section.

(3) The Director of the Department of Health and Human Services may suspend a license issued under Chapter 15 for up to 3 days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking establishment has knowingly and repeatedly violated any provision of this Section.

**[24-9A. Smoking in eating and drinking establishments.]**

[(a) Definitions. In this Section, the following words have the meanings indicated:

(1) Bar means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.

- (2) Eating and drinking establishment means an establishment regulated under Chapter 15.
- (3) Enclosed means separated by walls or partitions.
- (4) Indoor means covered by a roof and enclosed.
- (5) Private function means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites. "Private function" does not mean an event held by a private club or association to which members of the general public are invited.]

[(b) Applicability.

- (1) This Section applies to an eating and drinking establishment if the total seating capacity of all non-bar areas is 50 or more.
- (2) This Section does not apply to any area of an eating and drinking establishment that is:
  - a. A bar; or
  - b. Being used exclusively for a private function.]

[(c) Nonsmoking area required. A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least 50 percent of the total seating area of that part of the establishment that is not:

- (1) A bar; or
- (2) Being used exclusively for a private function.]

[(d) Notice. Any person who operates an eating and drinking establishment subject to this Section must:

- (1) Post conspicuously at each entrance a sign stating that a nonsmoking area is available;

- (2) Ask whether each patron wants to be seated in the smoking or nonsmoking area;
- (3) Refuse to seat or serve a person who smokes in a nonsmoking area; and
- (4) Ask a person who smokes in a nonsmoking area to leave the establishment if the person continues to smoke after proper warning.]

[(e) Prohibition. A person must not smoke in:

- (1) An area that is designated for nonsmoking under this Section; or
- (2) Any restroom that is open to customers.]

[(f) Enforcement and penalty.

- (1) A person who operates an eating and drinking establishment in violation of any provision of this Section may be punished for a class C violation under Section 1-19.
- (2) A person who smokes in a nonsmoking area in violation of this Section may be punished for a class C violation under Section 1-19.
- (3) The Director of the Department of Health and Human Services may suspend a license issued under Chapter 15 for up to 3 days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking establishment has knowingly and repeatedly violated any provision of this Section.
- (4) The County Attorney or any affected person may file an action in any competent court to enjoin violation of this Section.]

**Sec. 2. Severability; legislative intent.**

(a) The County Council intends that, if a court issues a final decision holding that any part of County Code Section 24-9, as amended by

Section 1 of this Act, or the application of Section 24-9 to any person or circumstance, is unconstitutional or invalid, the remaining provisions of Section 24-9 and the application of that Section to all other persons and circumstances remain in full effect.

(b) Without limiting the generality of subsection (a), if the exemption from the prohibitions of Section 24-9 that is contained in subsection 24-9(c)(7), as inserted by Section 1 of this Act, is held to be unconstitutional or invalid on its face or as applied to any person or circumstance, then the Council intends that:

(1) the exemption be severed from the remainder of Section 24-9;

and

(2) all provisions of Section 24-9, as otherwise amended by Section 1 of this Act, continue in effect and apply to all eating and drinking establishments, including those eating and drinking establishments that were exempted under subsection 24-9(c)(7), as inserted by Section 1 of this Act.

**Sec. 3. Marketing Assistance.** The Department of Economic Development must establish and administer a fund, subject to appropriation, to provide marketing assistance to County restaurants affected by the provisions of this law. The Department must develop criteria for use of these funds and report to the Council quarterly on expenditures from the fund.

*Approved:*

/s/

July 3, 2003

Michael L. Subin, President, County Council

Date

